



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,170	06/04/2001	Vasanth Bala	10003355-1	7644
7590 01/30/2007 HEWLETT-PACKARD COMPANY Intellectual Property Administration P.O. Box 272400 Fort Collins, CO 80527-2400			EXAMINER PROCTOR, JASON SCOTT	
			ART UNIT 2123	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/874,170

Applicant(s)

BALA ET AL.

Examiner

Jason Proctor

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 2-24 were rejected in the office action dated 28 August 2006.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 December 2006 has been entered.

The 1 December 2006 submission has amended claims 2, 9, 14, 18, and 23. Claims 2-24 are pending in the application.

Claims 2-24 are rejected.

Claim Interpretation

The Examiner thanks Applicants for the clarifying amendments to the claim terminology, especially regarding the term "granularity".

1. It is not entirely clear how to identify whether a code segment has been "dynamically tailored" as recited by at least claims 2, 14, and 18. It is unclear if this distinguishes the granularity from other types of tailoring or other dynamic processes. Claim 1 recites "parsing of said code segments being dynamically performed" and later recites "the plurality of dynamically tailored code segments," which appears to imply that "tailor" means "parse" in the context of the claim language. It is unclear whether Applicants intend for these terms to be interchangeable or

if one term should be interpreted more broadly than the other. For the purposes of examination, the phrase “dynamically tailored” is interpreted as meaning, “parsed upon request, rather than in advance of a request” and generally conforms to the nature of the invention (abstract).

Response to Arguments – 35 USC § 103

2. In response to the previous rejections of claims 2-24 under 35 U.S.C. § 103 as being unpatentable over Shimura in view of Official Notice, Applicants argue primarily that:

Applicants respectfully submit that Shimura does not teach this claimed feature [of claims 2, 9, 14, 18, and 23]. Applicants do not understand Shimura to teach dynamic parsing of application code into code segments wherein the parsing of the code segments is dynamically performed based on actual server-side and client-side execution overhead, network bandwidth efficiency, and client-side storage requirements on a per client basis (emphasis added by Applicants).

The Examiner respectfully traverses this argument as follows.

The phrase “parsing of the code segments is dynamically performed” is interpreted as meaning “parsing of the code segments upon request, rather than in advance of a request.” Shimura teaches that “the parsing of the code segments is dynamically performed” [“*When the compile controller 22 of the substitute compile server 10 accepts a request to acquire the Java program using the http protocol from the clients 14-1 to 14-4... the compile controller 22 provides a control of the compile unit 28 so as to allow the byte code of the Java program delivered from the Web server 20 to be compiled into a machine code of native environment conforming to the execution environment of the client issuing the request at that time*” (column 4, lines 35-51)].

The phrase “based on actual server-side and client-side execution overhead, network bandwidth efficiency, and client-side storage requirements on a per client basis” is interpreted broadly. This limitation does not positively recite how the “actual server-side and client-side

execution overhead, network bandwidth efficiency, and client-side storage requirements on a per client basis” influence the parsing. The claim language merely requires that the parsing, in some way, be based on these parameters.

Regarding the “actual server-side and client-side execution overhead,” Shimura teaches that both the server and client perform execution [“...*the Java program is delivered from the Web server 20 to the substitute compile server 10...*” (column 4, lines 42-48), i.e. the Web server performs execution for at least the task of delivering the Java program; “*clients 14-1 to 14-4 are provided with the hot Java browsers... to thereby execute* [the Java Program]. Execution can only take place “based on actual execution overhead”.

Regarding “network bandwidth efficiency,” Shimura teaches that the code segments are delivered via a network [“*the compiled Java program is returned via the LAN interface 30 to the requesting client 14-1...*” (column 5, lines 58-61)]. A network inherently has “bandwidth efficiency,” and can only transmit data when there is available bandwidth.

Regarding “client-side storage requirements,” Shimura teaches that the client receives and executes the Java program, and inherently must store the Java program in at least the processor’s registers [“...*the compiled Java program is returned via the LAN interface 30 to the requesting client 14-1 in which the Java program comprised of the compiled native code is run.*” (column 5, lines 58-61)].

Finally, Shimura teaches that the preceding features are based on a “per client basis” [“*When accepting a request to deliver the Java program from the client side, the compile controller 22 of the substitute compile server 10 recognizes the execute form of the client through the reference to the control memory 26 based on the client server names and recognizes*

Art Unit: 2123

the native code of the execution environment in which the compile unit 28 compiles from the byte code of the Java programs.” (column 5, lines 1-26)].

That is, the compile controller “dynamically parses” (in response to a request) the Java program code segments, which is necessarily based on the execution overhead at the compile server (else it could not execute the compiling procedure), is necessarily based on the network bandwidth efficiency (else it could not transmit the results via a network interface), is necessarily based on client-side storage requirements (else the client could not execute the program), and is necessarily based on execution overhead at the client (else the client could not execute the program).

Applicants refer to the above arguments as applied to other independent claims 9, 14, 18, and 23, as well as the dependent claims. Those arguments have been addressed above.

Applicants’ arguments have been fully considered but have been found unpersuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

3. Claims 2-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,370,687 to Shimura (supplied by Applicant) and further in view of Official Notice.

Regarding claim 2, Shimura teaches:

A networked system (column 2, lines 16-30) comprising:

a network (column 2, lines 16-30):

a server coupled to the network, wherein the server includes (column 2, lines 16-30):

an application code source that stores a client application, and a server code manager coupled to the application code source (Web server from which programs are retrieved, column 4, lines 27-35; Fig. 1, reference 20);

an application code transformation manager coupled to the application code source, for transforming the client application from a first format to a native binary format compatible with a native instruction set of the CPU of the client ("compile controller ... recognizes the execute form of the client ... and recognizes the native code of the execution environment in which the compile unit 28 compiles from the byte code of the Java program"; column 4, line 52 – column 5, line 26); and

a server code segment manager coupled to the application code transformation manager, for parsing the client application in the native binary format into a plurality of code segments, said parsing of said code segments being dynamically performed based on actual server-side and client-side execution overhead, network bandwidth efficiency and client-side storage requirements on a per client basis, and configured based on predicted code segment usage or prior code segment usage history, wherein at least one of said plurality of code segments being transmitted to the client via the network [*"Then, in response to a request for the Java program from a client to the Web server on the network, the substitute compile server 10 returns to the client the Java program which has been compiled and optimized into a native code conforming to the execute form of the requester client."* (column 6, lines 25-48, emphasis added)]; and

a client coupled to the network said client not having said client application stored thereon, wherein the client comprises (column 2, lines 16-30):

a CPU for natively executing at least one of said plurality of said code segments derived from the client application stored on said server (column 4, line 52 – column 5, line 26);

a code cache coupled to the CPU for storing said code segments (Official notice is taken that it is well known in the art to provide a CPU with a code cache. This Official Notice was first taken in the office action of 16 May 2005. Applicants have not traversed this use of Official Notice and as such, it is regarded as admitted prior art. See MPEP 2144.03 (C)); and

a client code manager-coupled to the code cache, for launching the client application by requesting that the server code manager transmit at least one of the plurality of dynamically tailored code segments to the client (column 5, lines 27-32), receiving at least one of the dynamically tailored code segment from the server (column 5, lines 58-61), storing the dynamically tailored code segment in the code cache (Official Notice has been taken above regarding a code cache), and executing at least one of the plurality of dynamically tailored code segments using the CPU until the executed dynamically tailored code segment attempts to pass control to a required code segment not stored in the code cache (column 7, line 42 – column 8, line 18), at which point control passes back to the client code manager to retrieve the required code segment from the server, with the CPU continuing execution with the required code segment [*"...if the client side makes a request for the class file 42-2 [a next required code segment] with successful prediction, then the compiled Java program can be executed at a high speed in an immediate response to the program request from the client side sine that program has already been compiled and retained on the cache unit 12."* (column 7, line 42 – column 8, line 18)].

It would have been obvious to a person of ordinary skill in the art at the time of Applicants' invention to implement the system taught by Shimura using a code cache in conjunction with the list of processors expressly taught by Shimura [*"SPARCV8, X86, Intel 486, etc."* (column 4, line 52 – column 5, line 26) because these processors either possess a code cache or it is well known in the art to use a code cache. The motivation for using a code cache is well known in the art, for example, to increase the effective speed of the processor by caching instruction code on the processor.

Regarding claim 3, Shimura teaches that the first format is other than the native execution format of the CPU of the client (column 5, lines 15-26). A compiler is functionally equivalent to a "transformation engine to transform the client application from the first format to the native binary format of the CPU of the client".

Regarding claim 4, Shimura does not explicitly teach that the first format is a source code text format of a programming language and the transformation manager comprises a compiler that compiles and links the client application into a native binary format of the CPU of the client. However, Shimura does explicitly teach that the first format is a "Java program in the form of the virtual machine computer program prepared as an applet on the web page" (column 4, lines 28-30) which is compiled using a Java™ compiler (column 4, lines 42-51 and throughout). It would have been obvious to a person of ordinary skill in the art that the term "Java applet" commonly refers to source code in a text format intended for use in a web page and that source code in a text format is well known input to a typical compiler. It therefore would have been obvious to a

person of ordinary skill in the art to implement Shimura's system where the first format is a source code text format of a programming language and compiling that source code into a native binary format of the CPU of the client.

Regarding claim 5, Shimura teaches that the transformation manager comprises a just-in-time compiler (column 5, lines 8-15).

Regarding claim 6, Shimura's teaching regarding class files (column 7, line 42 – column 8, line 18) would be obvious to a person of ordinary skill in the art at the time of Applicants' invention as functionally equivalent to "code segments". It would be obvious to a person of ordinary skill in the art at the time of Applicants' invention to implement this functionality with a client code manager that requests needed segments from the server and to branch into the received code segment. Indeed, this is the functionality implied by Shimura (column 7, line 57 – column 8, line 13) although the obvious details of implementation are omitted.

Regarding claim 7, Shimura does not explicitly recite the steps of adjusting branch instructions to link into and out of received code segments as recited. Shimura implies this functionality (column 7, line 42 – column 8, line 18; column 9, line 63 – column 10, line 9). Official notice is taken that the need to link code that is compiled in sections is well known. It would have been obvious to a person of ordinary skill in the art at the time of Applicants' invention, in combination with his own knowledge of the particular art, to adequately support linking sections of compiled code by adjusting the branch instructions. Failure to do so would

Art Unit: 2123

create an inoperable system, as would be recognized as well known by a person of ordinary skill in the art. Applicants have not traversed this use of Official Notice and as such, it is regarded as admitted prior art. See MPEP 2144.03 (C).

Claim 8 recites what is generally known in the art as “garbage collection”. Official notice is taken that Java™ and the Java™ virtual machine support garbage collection. It would have been obvious to a person of ordinary skill in the art at the time of Applicants’ invention, in combination with his own knowledge of the particular art, to implement the system taught by Shimura using garbage collection because of the well-known advantages of garbage collection, such as ease of programming and recovery unused memory.

Claims 9-13 recite the server portion of the system of claims 1-5 and are rejected for the same reasons given above for claims 1-5.

Claims 14-17 recite the client portion of the system of claims 1 and 6-8 and are rejected for the same reasons given above for claims 1 and 6-8.

Claims 18-22 recite the methods performed by the system of claims 1-7 and are rejected for the same reasons given above for claims 1-7.

Claims 23-24 recite a computer program product and system according to claims 1-7 and are rejected for the same reasons given above for claim 1.

Conclusion

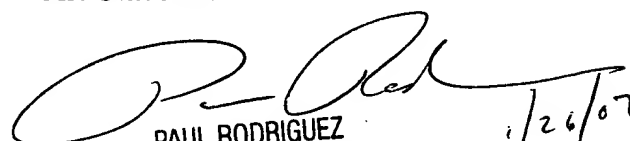
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Proctor whose telephone number is (571) 272-3713. The examiner can normally be reached on 8:30 am-4:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached at (571) 272-3753. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason Proctor
Examiner
Art Unit 2123

jsp


PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100
1/26/07